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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-678

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT, *Petitioners,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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QUESTION PRESENTED

Whether the Congress, under its constitutional authority to exercise exclusive legislation (jurisdiction) in all cases over the District, may enact a statute authorizing the local collection of tax on privately owned personal property used in a business and located anywhere in the District of Columbia?

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT

Under Article I, Section 8, Clause 17 of the Constitution, Congress has authority to exercise exclusive legislation (jurisdiction) in all cases over the District. That authority includes the power to impose taxes.[1] In exercising this authority, Congress enacted a personal property tax for the District of Columbia over eighty years ago, in 1902. Act of July 1, 1902, 32 Stat. 618, Chap. 1352, codified at D.C. Code, 1981, § 47-1507. Both when enacted, and now, § 47-1507 provides in broad terms that personal property located anywhere in the District of Columbia shall be subject to tax except as specifically exempted. It now reads in pertinent part:

> On all tangible personal property assessed at a fair cash value (over and above the exemptions provided in section 47-1508), including vessels, ships, boats, tools, implements, horses and other animals, carriages, wagons and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law.[2]

The categories of personal property exempt from this provision are set forth in D.C. Code, 1981, § 47-1508.[3] They exclude the personal property of benevolent, charitable, and other similar organizations not conducted for private gain, or libraries, household belongings not used for business purposes, works of art on loan to the National Gallery of Art

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[1] See *Neild* v. *District of Columbia*, 71 App.D.C. 306 (1940).

[2] The original enactment is virtually identical. See 32 Stat. 618.

[3] §47-1508. Exemptions.

The following personal property shall be exempt from taxation:

(1) The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain;

(2) Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in

(Footnote continued on page 3)

for exhibition without charge to the public, and motor vehicles subject to registration fees not part of a merchant's stock-in-trade.

Petitioners Itel and U.S. Trust, private business corporations, own personal property (automatic data processing equipment) which they lease to the federal government in the District of Columbia. The federal government has exclusive use of the equipment with petitioners' obligations being limited to repair and/or replacement of nonfunctioning equipment. Petitioners held title to the leased equipment at all relevant times in this litigation.

Pursuant to D.C. Code, 1981, § 47-1507 (formerly D.C. Code, 1973 ed., § 47-1207), the District of Columbia assessed a tax against the personal property owned and leased by

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[3] Footnote con't from previous page.

any trade or business. For the purposes of this section, the words "household belongings" shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words "trade or business" shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit;

(3) Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the trustees of the National Gallery of Art solely for exhibition without charge to the general public;

(4) Any motor vehicle or trailer registered in accordance with the provisions of Chapter 1 of Title 40, and not comprising any part of the stock-in-trade of a merchant: Provided, that any motor vehicle or trailer comprising all or part of the stock-in-trade of any merchant shall continue to be taxed as provided by law: Provided further, that special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law.

petitioners to the federal government for 1978, 1979 and 1980. Petitioners challenged the assessments on the grounds that the personalty was located either on federally-owned realty, or in federally-owned buildings in the District of Columbia. They alleged that the tax constituted an intrusion of a lesser government upon "exclusive federal enclaves" without specific congressional consent. Therefore, they paid the personal property taxes assessed, totalling approximately $500,000, and filed a claim for refund, which was denied by the District*.

Subsequently, petitioners filed a refund suit in the Tax Division of the Superior Court of the District of Columbia. The parties filed cross motions for summary judgment. In an order filed April 29, 1981, the Tax Division judge granted summary judgment in favor of the District of Columbia. Petitioners lodged an appeal from this order. On July 21, 1982, a three judge panel of the District of Columbia Court of Appeals ruled unanimously in the District's favor. The Court rejected petitioners' contention that the tax constituted an "unwanted intrusion" by "lesser governmental entities" in areas of primary federal interest:

> But regardless of how such areas are characterized, all parties must concede that Congress has the power to authorize the application of a tax therein. (Pet., App. at 2a)
>
> * * * * *
>
> The tax here at issue was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government, but by the Congress itself. It can hardly be said that this amounts to an intrusion of federal prerogatives. (Pet., App. at 4a)

This petiton for a writ of certiorari to review the decision of the District of Columbia Court of Appeals followed on October 19, 1982.

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* Although the tax has been imposed and collected since 1902, this is the first court challenge on these grounds.

REASONS FOR DENYING THE WRIT

Petitioners assert that this case merits the Court's attention on the ground that it purportedly concerns "the ability of the national government to operate without interference from the municipal government it created to deal with purely local matters" (Petition p. 14). That characterization is inaccurate. This case simply concerns the interpretation of a taxing statute Congress enacted in 1902 to provide revenues for the District of Columbia Government. Specifically, it concerns whether, in enacting that statute, Congress intended an exemption for which it made no provision, namely, an exemption for privately-owned property used to generate private business income when that property is used on federally-owned land or in federally-owned buildings. The District of Columbia Court of Appeals was clearly correct in ruling that there is no basis upon which the courts could properly rewrite the statute in question in the manner sought by petitioners.

The terms of the relevant District of Columbia statute make it clear that Congress intended that there should be a broad tax on all private personal property used in business in the District, unless specifically exempted. Section 47-1507 expressly states that the tax shall apply to "all tangible personal property". Section 47-1508 lists the categories of property that shall be exempt. The legislative history unmistakably shows that the kind of property Congress intended to reach was property used to generate business income:

> It is inconceivable that Congress will permit personal property in the District of Columbia to remain untaxed. That capital *employed remuneratively* under the special protection of incorporation laws shall pay nothing for the support of the government has never been the practice in any State or Territory of the Union; and Congress has never contemplated such exemption in the District of Columbia. All property, both real and personal, should pay its just share for the support

> of the government. (S.Rept. No. 1035 (57th Cong., 1st Sess. 1902) at 4.) (Emphasis supplied.)

The personal property at issue here, data processing equipment owned by private corporations, clearly falls within the broad terms of § 47-1507, and is not exempted under any of the provisions of § 47-1508. Because this personal property is used to generate business income, it is also clearly within the scope of personal property Congress intended to be taxed.

Petitioners argue that the court below engaged in a literal interpretation of the statute. The D.C. Court of Appeals, however, interpreted the statute in light of both its language and apparent purpose, concluding "on the basis of both . . . . one would have to conclude that ITEL'S property is not exempt". (Pet. at 3a). Petitioners assert that the interpretation below

> will result in the taxation of privately-owned personal property used in carrying on the professional work of members of Congress and located in their Congressional offices, of Government workers in their offices, of military personnel in their offices at installations such as Bolling Air Force Base and Fort McNair, and of members of the federal judiciary. Equally significant, the District Government can now rely upon the similar absence of an exemption for *federal* personal property in D.C. Code § 47-1508 . . . . . to authorize the taxation of federal personal property. (Emphasis theirs; Pet. at 12).

The results petitioners fear do not follow from the Court of Appeals' analysis. Since the statute was directed at property which generates business income, the examples given by petitioners of the use of private property by public officials in performing their public duties, are clearly beyond the statute's purview. Similarly, the context in which the 1902 statute was enacted shows that it was never intended to reach federally-owned personalty. At the time the statute in question here was enacted, federally-owned personalty had been specifically exempted by Congress from District of Columbia personal property taxes for

over 25 years.[4] There is no analogous ground to interpret the statute to exempt petitioners private personalty used to generate private business income.

Petitioners assert that the decision below allows the District of Columbia to tax private property on property under exclusive federal jurisdiction without the federal government's consent, "a power possessed by none of the sovereign states". (Pet. at 14). But as stated by the court below:

> Since § 47-1507 was enacted by Congress, it would constitute congressional consent if any were required. In the words of the D.C. Circuit, "[i]f the consent restriction applies to the statute here involved [§ 47-1507], it has been met, as consent could be evidenced in no clearer fashion than by the fact of enactment itself." *Mercury Press* v. *District of Columbia, supra* at 204, 173 F.2d at 637. Thus even if the analysis used in state cases were applicable here, the result would still be that the tax could be applied to personal property on federal land. (Pet. at 6a - 7a; footnote omitted).[5]

Finally, petitioners assert that this case presents the same kind of "overly expansive interpretation" by the District of its taxing power that has required the United States Government to resort to litigation in two other cases to prevent interference with its activities in the District of Columbia. (Pet. at 13). However, in *United States* v. *District of Columbia*, C.A. No. 82-0923 (decided September 3, 1982;

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[4] See, the Act of March 3, 1875, 17 Stat. 501, Chap. 162, § 1 and the Act of March 3, 1877, 19 Stat. 396, Chap. 117, § 1. That exemption was not affected by the Act of July 1, 1902. See, Section 8 of the Act of July 1, 1902, 32 Stat. 629.

[5] As recently as last year, the District of Columbia Circuit stated the following with respect to a constitutional claim and local District taxes:

> . . . . . constitutionally grounded federal tax immunity from state taxation would not bar the tax in question. The D.C. sales tax was enacted by Congress, not a state. *United States of America* v. *District of Columbia*, 669 F.2d 738, 740 (1981).

appeal pending), a suit for declaratory judgment regarding the status of the United States Capitol Historical Society for local tax purposes, the trial judge based his decision on a finding that the Society was a federal instrumentality. In *United States* v. *District of Columbia*, C.A. No. 81-1532 (D.D.C. - pending), which does involve the same issue of statutory interpretation as this case, the United States is a party to the suit because, pursuant to a contractural agreement, it agreed to reimburse a private party (Itel) for its share of local personal property taxes. The United States will have ample opportunity, at both the trial and appellate levels, to present its arguments to the federal courts.

Petitioners have presented no ground warranting review of this case by this Court under its certiorari authority.

CONCLUSION

The petition for writ of certiorari should be denied.

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